



U.S. Department of Justice
Office of Information Policy
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Emma Best
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Re: Appeal No. DOJ-AP-2019-002020*
Request No. 1416764†
CDT:JNW

VIA: Email

Dear Emma Best:

You appealed from the actions of the Federal Bureau of Investigation on your Freedom of Information Act requests for access to records concerning Cornelius Joseph Gearin, Vera Viola States Nutt, Anne R. Wassil, Ruth Leona Sinclair, Gerald B. Nutt and William P. Evers. I note that your appeals concern the FBI's refusal to confirm or deny the existence of any additional responsive records concerning these named individuals. Please note that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeals.

After carefully considering your appeals, I am affirming the FBI's actions on your requests. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. To the extent that you are seeking any records apart from those released in Request No. 1367480, the FBI properly refused to confirm or deny the existence of records responsive to your requests. Confirming or denying the existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been

* Please be advised that this letter also handles Appeal Nos. DOJ-AP-2019-002023, DOJ-AP-2019-002028, DOJ-AP-2019-002037, DOJ-AP-2019-002046 and DOJ-AP-2019-002055.

† Please be advised that this letter also addresses Request Nos. 1416811, 1416781, 1416798, 1416770 and 1416774.

the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7").

To the extent that your requests seek access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any such records because their existence is protected from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions. Further, it is reasonably foreseeable that confirming or denying an individual's placement on any government watch list would harm the interests protected by this exemption. See, e.g., Kalu v. IRS, 159 F. Supp. 3d 16, 23 (D.D.C. 2016). This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

Please be advised that this Office's decisions were made only after a full review of these matters. Your appeals were assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeals, your underlying requests, and the actions of the FBI in response to your requests.

If you are dissatisfied with my actions on your appeals, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the actions this Office has taken on your appeals, you may contact this Office's FOIA Public Liaison for your appeals. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

7/30/2019

X



Christina D. Troiani, Associate Chief, for
Sean O'Neill, Chief, Administrative Appeals Staff
Signed by: CHRISTINA TROIANI